

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 264 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA
and
MISS JUSTICE R.M.DOSHIT

- =====
1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?
1 TO 5 - NO

VIRMA KAGU

Versus

STATE OF GUJARAT

Appearance:

MR JV DESAI for Petitioner
MR PB BHATT APP for Respondent No. 1

CORAM : MR.JUSTICE M.R.CALLA and
MISS JUSTICE R.M.DOSHIT
Date of decision: 04/05/98

ORAL JUDGEMENT (PER : M.R.CALLA J)

This Criminal Appeal is directed against the judgment and order of conviction and sentence passed in

Sessions Case No. 76/89, by the learned Sessions Judge, Himatnagar, on 21st February, 1990, whereby the accused has been convicted for the offence punishable under section 302 of the IPC, and has been sentenced to imprisonment for life and a fine of Rs.100/-, and in default of payment of fine, to further undergo RI for one month.

The case arises out of an incident dated 22nd July, 1989. The prosecution came with the case that the present appellant Virma Kagu who was about 30 years at the time of the incident, had killed his wife Bachuben by strangulation. Ex. 26 is the first document, which is in the hand-writing of the deceased Bachuben's sister Savitaben and was given to the police by the father of the deceased i.e. Rambhai Lalabhai. The father of the deceased, thus, brought to the notice of the police that on Saturday night at about 11-12 O'clock, the appellant Virma Kagu had seriously beaten his daughter and as a result thereof, she was not able to walk. It was further stated that the appellant was bent upon to kill Bachuben, he had taken drinks and had brutally beaten Bachuben and there was a real danger of her being killed. It is also stated in the application dated 22nd July, 1989 that for last about six months, he was treating Bachuben with cruelty and in case the police protection is not given, there was every likelihood of Bachuben being killed at the hands of the appellant, and in case the police protection is not afforded and immediate steps are not taken, anything can happen at any time. It was also stated in this application that Bachuben had told her father that her husband was interested in the lady named Champaben who was living nearby and he was bent upon to bring Champaben and live with her, come what may. While the police was yet to take the steps on the aforesaid application Ex.26, dated 22nd July, 1989, the complaint was filed by the father of the deceased Bachuben at Mark-A, dated 22nd July, 1989, with the police station at Vadali, that one of his daughters viz. Bachuben was married to the appellant-Viram Kagu of their own village. The marriage had taken place about 7 years ago and the appellant and Bachuben had two children alive. Bachuben and the appellant were living separately with their children. Her father-in-law had died and the mother-in-law was living with another son viz. Bhima. His daughter Bachuben had come to his house about two and half months ago and told him that her husband was keeping illicit relations with a lady named Champa living nearby their house and as and when she objects to it, she is being beaten by him, whereupon, Sarpanch Jiva Thavra, Ninama and Asari Nagji and other residents of the village

had tried to counsel his son-in-law i.e. the present appellant, to whom he assured that henceforth he would not go to Champa and would not beat Bachuben i.e. his wife. On this assurance, Rama Lala had sent his daughter again with his son-in-law i.e. the present appellant. In this complaint, it has been further stated by Rama Lala that on 22nd July, 1989, in the morning at about 8-00 AM when he was returning to his village from village Goral after supplying milk, on the way, Savji Kagu i.e. elder brother of the appellant-accused met him and told him that he must get his daughter divorced from Viram Kagu; that on the previous night, there was a serious quarrel between the two and some day his brother i.e. present appellant-accused is likely to kill Bachuben. Ramabhai has further stated in this complaint that he told Savji Kagu that they were brothers and they should counsel their brother Viram Kagu. From there, he straightway went to Vadali and moved an application before the police seeking the police protection. Thereafter he went to his house and sent his son to go for supplying the milk and he went for grazing his buffaloes. At that time the police came in search of his son-in-law, but he was not available at the house. The house was found to be locked from out side. In the meantime, his other daughter Savita had come to the house of Bachuben to tie up the goats. She raised alarm that Bachuben was hanging in the house. The persons living nearby had assembled there and found that in the back portion of the house, Bachuben was hanging with nylon string, which is used for cots. It was also stated in this complaint that his son-in-law has done his daughter to death because of his illicit relations with Champaben objected to by his daughter. Thereupon the police investigated the matter, arrested the accused Virma Kagu. PW-16, Ex-39 at page 144 is the statement of the Investigating Officer, in which the details of the investigation have been given. On 23rd July, 1989, the accused was arrested. In the course of the investigation, apart from recording the statements of various witnesses, the body of the deceased Bachuben was sent for postmortem and the accused was also subjected to the medical examination by the Medical Officer of the Community Health Centre, Idar. Dr. Purshottam K. Gohil, Medical Officer, Community Health Centre, Idar, has been examined as PW-2 Ex-10, who has proved the certificate of injury report of the accused. PW-1 Dr. Dineshkumar C. Parikh, Superintendent of Community Health Centre, Idar, had conducted autopsy and has proved the postmortem report of the deceased Bachuben. The appellant was charged for committing the murder of his wife Bachuben and the learned Sessions Judge after trial, has convicted and sentenced him as aforesaid.

So far as the factum of the consistent cruelty to which the deceased had been subjected by her husband i.e. the present appellant is concerned, there is voluminous evidence on record including the evidence of contemporaneous nature in the form of Ex.26 i.e. on the previous night on the date on which Bachuben was done to death and on the question of motive also, the witnesses have consistently said that the appellant was having illicit relations with a lady named Champaben living nearby their house and this relationship of the appellant with Champaben was objected to by his wife i.e. the deceased Bachuben. Thus, the motive and the immediate cause, in the facts of this case, is fully established through the discussion made by Bachuben during her life time to her father and statement of Rambhai Lalbhai (father) PW-8; Savitaben Ramabhai - PW-9 who is sister of the deceased Bachuben; Babubhai Laxmanbhai Asari - PW-10, and Nagjibhai Dhanabhai - PW-12 etc. With regard to the commission of the actual offence, of course there is no eye witness, but the circumstances attendant and preceding to the incident as has been deposed through various witnesses i.e. PW-8 father of the deceased; PW-9 sister of the deceased and other residents of the village including PW-10, PW-11 and PW-12 etc. clearly indicate that it is the appellant who had strangled his wife Bachuben and hanged her in the house. Apart from this, there is an extra judicial confession which has been made by the accused-appellant before the witnesses i.e. PW-10 Babu; PW-11 Valji. It is also relevant that both these two witnesses have been declared hostile but PW-10 Babu has stated that on 22nd July, 1989, he had gone to Goral Seva Sahkari Mandali and at about 5-00 PM in the evening had left Goral to return to his house. At that time, he met the accused who was going with his son. He has stated that the accused was disturbed and was perspiring. This witness asked him as to why he was perspiring, but he in his examination-in-chief before the court has said that the accused did not give any reply and went to Goral and then this witness came to Shedhavada. At this juncture, this witness was declared hostile and thereafter when a suggestion was made to him that he had stated before the police that he asked the accused where was he going and what had happened and thereupon the accused told him that he had finished Bachuben and now he was going to Goral with his son and he was to go towards Jinjad the suggestion was denied by him and he has also denied the suggestion that he was a friend of the accused and therefore was making a wrong statement. PW-11 Valji has stated before the court in his examination-in-chief

that on 22nd July, 1989, he had gone to village Goral at about 4-00 PM, the accused met him along with his son, and thereafter had gone to a hotel, but there was no talk. At this juncture, this witness was also declared hostile and a suggestion was made to him that he had stated in his statement before the police that at about 4-00 PM he met accused Viram Kagu with his son near hotel, the accused was disturbed and breathing fast and was perspiring and when he asked the accused as to what had happened, he ordered for tea from the hotel and at that time he told that he had finished his wife Bachuben, had locked his house and had infact left with his son and he had to go to Jinjudi. This suggestion has been denied by this witness. These witnesses have denied the suggestions as above, but their statements made before the court coupled with extra judicial confession of the appellant made before PW-2 Dr. P.K.Gohil remained untrammelled in as much as this witness PW-2 who is Medical Officer of Community Health Centre, Idar, is naturally an independent witness and he has deposed in his statement before the court that the accused Viram Kagu had told him that while his wife was grinding corn, he had strangulated her, and further that she had caused him injury with nails. on 22nd July, 1989 at about 10-00 AM. He had also recorded this fact in the history of the case in the case-paper Ex.12 and has also noted nail bites (abrasion) four in number on the right cheek greenish coloured vertical at the level of pinna of right ear, and that the age of the injury was within 24 to 48 hours. It is clearly recorded as was disclosed by the accused before the Doctor that while his wife was grinding the corn, he had strangulated her and on 22nd July, 1989 itself at about 10-00 AM, his wife had injured him with nail bites, and this also was recorded in the injury certificate Ex.13. Thus, the extra judicial confession made by the accused before the Dr. P.K.Gohil PW-2, Ex-10 at page-62, the case papers Ex.12 and Ex.13 at page 69 and 71, leave no scope to doubt the correctness of the extra judicial confession of the accused as aforesaid that it is he who had strangulated his wife. Thus, there is wholesome evidence in support of the commission of the offence of the murder of the deceased Bachuben at the hands of the accused-appellant in the afternoon of 22nd July, 1989, for which there was motive as well as immediate cause and the evidence of the cruelty to which she was subjected by the appellant for about six months prior to the commission of the offence.

The circumstance that the house was found to be locked also is an important circumstance to be noticed and the attempt on the part of the defence to give the

incident a colour of suicide has no basis. The gate was of only bamboo-chips, and it could be locked from in-side as well as from out-side and it is no consequence to say that because the door was locked it was a case of suicide. The inquest report and the Panchnama of the scene of the offence also do not support the theory of suicide. No stool or table or any such object has been found which could be used by the deceased so as to commit the suicide by hanging and the post-mortem report which has been proved by PW-1 Dr. Dineshkumar shows that the cause of death in his opinion is asphyxia followed by hanging, and he has also stated that the same are sufficient in the ordinary course of nature to cause the death of the victim. He has also deposed that looking to the injuries, the victim could have been assisted by some other agency in terminating her life. He has stated that autopsy was conducted by a panel of Doctors including himself and Dr. P.K.Gohil. The deceased was of 25 years of age, trachea was congested, tongue was blackened and bitten and protruded partially. He has also stated that the deceased was carrying pregnancy of three months. Thus the post-mortem report alongwith the statement of PW-1 also support the theory that the deceased has been strangled and hanged. Merely because in the end of his statement, he has said that she might have committed suicide does not render the entire prosecution story to be unbelievable. In view of the evidence on record of this case and the extra judicial confession made by the appellant before PW-2 Dr. P.K.Gohil, which is also supported by contemporaneous evidence of case papers at page 69, Ex-12 and page 71 Ex.13 i.e. injury report of the accused himself. Thus, there is contemporaneous documentary evidence to support the prosecution case with regard to the extra judicial confession made by the accused, and we find that the appellant-accused and none else is the person guilty for the offence of committing murder of the deceased Bachuben. There is no basis to take it as a case of suicide. The appellant-accused had treated deceased Bachuben with cruelty for obvious reason that she was objecting to his illicit relations with Champa, for which she had raised a grievance much before the date of the offence before his father and this has also been supported by the other witnesses and there are ample attendant and preceding circumstances to establish the case of the prosecution.

For the reasons aforesaid, we do not find any reason to interfere with the impugned judgment and order of conviction and sentence passed against the present appellant. There is no merit in the appeal and the same is hereby dismissed.

JOSHI